IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5473 of 2007()

CRIME NO. 533/2007 OF KONDOTTY POLICE STATION

PETITIONER/ACCUSED NO.2

CHERUMALA ABDULLA, S/O. ABOOBACKER,
KUTTATHI, KARUVARAKUNDU,MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA,REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
KONDOTTY POLICE STATION-THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5473 of 2007

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Dated this the 11th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. The 2nd accused is Cherumala Abdulla. Altogether there are two accused persons. They face allegations under Sec.420 read with 34 IPC. The curx of the allegations is that the defacto complainants- there are two joint complainants, were induced to believe by accused 1 and 2 that the 2nd accused had obtained a treasure which was available with him and he will be able to sell the gold therein for less than the market price. They were induced to part with money for accused 1 and 2. Accused allegedly handed over spurious metal as gold to the de facto complainants. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The prosecution has a further case that the 2nd accused initially represented himself as Alavi @ Koru and that in the course of the investigation it was revealed that the petitioner herein had given such incorrect name as part of the fraudulent

design which he entertained.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner does not have the name referred in the FIR at all. False allegations are being raised by the de facto complainant now with vexatious intention. In these circumstances, it is prayed that directions under Section 438 may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that this is not a fit case where the invocation of the extraordinary equitable discretion under Sec.438 can or ought to be made in favour of the petitioner. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course.

4. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must appear before the Investigating Officer or learned Magistrate and then seek regular bail in the ordinary and normal course.

5. In the result, this petition is dismissed. Need less to say that if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE